

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SOLVAY SOLEXIS, INC.,

Plaintiff,

v.

3M COMPANY, et al.,

Defendants

:

: Hon. Faith S. Hochberg

:

: Civil No. 04-6162 (FSH)

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: **ORDER**

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: Date: May 9, 2005

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HOCHBERG, District Judge:

This matter coming before the Court upon Defendants’ motion to dismiss pursuant to F.R.C.P. 12(b)(1), and Plaintiff having filed a declaratory judgment action, and Defendants asserting that an “actual controversy” does not exist for this Court to adjudicate, and the Court having reviewed both parties’ papers; and

it appearing that an “actual controversy” exists only where (a) the patentee has made a threat or taken action that creates a reasonable apprehension on the part of the declaratory plaintiff that it will face an infringement suit and (b) the declaratory plaintiff engages in activity which could constitute infringement or has taken concrete steps towards conducting such activity;¹ and

it appearing that both prongs of the “actual controversy” test are met in this case;

¹ *Amana Refrigeration, Inc., v. Quadlux, Inc.*, 172 F.3d 852, 855 (Fed. Cir. 1999).

IT IS on this 9th day of May 2005,

ORDERED that Defendants' motion is **DENIED**.

/s/ Faith S. Hochberg

Hon. Faith S. Hochberg, U.S.D.J.